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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

WEBB & CAREY,

Plaintiff and Respondent,

v.

JAMES W. KEENAN,

Defendant and Appellant.

D048667

(Super. Ct. Nos. GIC 817390,  
785255)

APPEAL from an order of the Superior Court of San Diego County, William R. Nevitt, Jr., Judge. Dismissed.

James W. Keenan appeals a postjudgment order denying his motion to vacate the judgment entered against him after the trial court granted the petition of law firm Webb & Carey, APC (Webb) to confirm an arbitration award in its favor. On appeal, Keenan contends the trial court erred by denying his motion to vacate, arguing: (1) the judgment was void because it confirmed an arbitration award that was void for lack of personal and subject matter jurisdiction and noncompliance with the parties' arbitration agreement; and

(2) he was not required to challenge the arbitration award within 100 days pursuant to Code of Civil Procedure section 1288 et seq.<sup>1</sup> We conclude this appeal does not raise issues different from those raised in Keenan's prior appeal of the judgment in Case No. D047948. Although the appeal challenges an order denying a motion to vacate the judgment, the motion was not, in substance, a motion to vacate a judgment as void for lack of fundamental jurisdiction of the trial court (rather than of the arbitrator). We therefore dismiss this appeal.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

In June 1998, Keenan signed an attorney-client agreement (Agreement) pursuant to which he and his wife Judy M. Keenan (together the Keenans) retained Webb as their attorney to represent them in claims against a bankruptcy trustee and Dorothy Satten. The Agreement included the following arbitration provision:

"7. Arbitration of Disputes with the Lawyers:

"If any dispute arises between you and [Webb] regarding our services or our billings or any other matter relating to this contingency fee agreement, such dispute shall be submitted to binding arbitration. Fee disputes shall be arbitrated according to the

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<sup>1</sup> All statutory references are to the Code of Civil Procedure unless otherwise specified.

<sup>2</sup> For a more complete discussion of the factual and procedural background in this case, please refer to our opinion in *Webb & Carey v. Keenan* (Dec. 29, 2006, D047948) [nonpub. opn.], review denied March 21, 2007, S150124. In that case, we affirmed the judgment confirming the arbitration award against Keenan. On January 10, 2007, we granted Webb's unopposed request that we take judicial notice of the record in that case (Case No. D047948) as well as the record in Case No. D045968 (appeal of Keenan's wife of the separate judgment against her).

guidelines and standards adopted by the State Bar of California, if any, then in effect. Any other dispute, and all fee disputes if the State Bar of California shall no longer have any guidelines or standards for fee disputes, shall be arbitrated in accordance with the rules of the American Arbitration Association.

"The decision of the arbitrator or arbitrators shall be final and binding. The arbitrator or arbitrators shall have the discretion to order the losing party to reimburse the prevailing party for all costs and fees incurred in connection with the arbitration, including attorneys' fees and the arbitrators' fees."

In March 2001, Webb withdrew as the Keenans' counsel because of a conflict of interest that arose when Satten filed an action against Webb and the Keenans for malicious prosecution. In April 2001, Webb sent the Keenans a final billing statement for attorney fees and costs incurred since the beginning of Webb's representation. The Keenans refused to pay Webb anything, asserting the Agreement was a contingency fee arrangement. On or about April 19, Webb sent the Keenans a notice informing them of their right to have their fee dispute arbitrated through a bar association program pursuant to Business and Professions Code sections 6200 et seq.

On May 4, Webb filed a demand for arbitration of the fee dispute before JAMS, an arbitration services organization. The Keenans were served with a copy of that demand on May 7. On May 8, JAMS sent a letter to Webb and the Keenans confirming receipt of Webb's arbitration demand and stating: "This letter will serve to commence the arbitration." It also enclosed a copy of its "streamline" arbitration rules and procedures and stated: "The Arbitration will be conducted in accordance with these rules, unless the parties agree otherwise." It also provided information regarding the procedures for appointment of a JAMS arbitrator to conduct the arbitration and identified a panel of six

JAMS arbitrators. On or about June 15, JAMS appointed Gilbert Harelson as the arbitrator. On or about July 23, JAMS notified the parties that the arbitration hearing would be held on August 14.

On August 14, an arbitration hearing was conducted. Patrick W. Webb and Kevin Carey appeared on Webb's behalf, but no one appeared on the Keenans' behalf. The case was submitted for the arbitrator's decision. On August 15, Keenan appeared at JAMS for the arbitration hearing. A conference call (presumably among all the parties and the arbitrator) was then scheduled for August 16. During the August 16 conference call, Keenan stated neither he nor his wife had signed the Agreement and inquired under what authority the arbitrator was proceeding. The arbitrator asked Webb to respond in writing to Keenan's assertion and gave Keenan seven days after his receipt of Webb's letter to respond. The arbitrator informed the parties that he would issue his decision thereafter. As of August 28, the arbitrator had not received any response from the Keenans.

On August 29, the arbitrator issued his decision awarding Webb \$516,434.66 for legal services rendered and costs advanced to the Keenans (the Award). The arbitrator found the Keenans were deemed "to have waived their right to otherwise participate at the arbitration hearing on August 14, 2001."

On or about August 29, copies of the Award were served on Keenan and the other parties to the arbitration.

On March 22, 2002, Webb filed a petition to confirm the Award. That petition was served by mail on the Keenans. On April 30, Judge Thomas C. Hendrix confirmed the Award and entered judgment for Webb in Case No. GIC 785255.

On September 2, the trial court (Judge H. Ronald Domnitz) issued an order granting the Keenans' motion to set aside the judgment because the petition had been served on them by mail and not personally, finding it "never acquired jurisdiction over [the Keenans] and that the Judgment is void."

On July 29, 2004, Webb filed a second petition to confirm the Award (in Case No. GIC 817390). The Keenans opposed the petition, arguing the Agreement's arbitration provision was unenforceable because it violated the Mandatory Fee Arbitration Act (MFAA) (Bus. & Prof. Code, §§ 6200 et seq.).

On August 26, Judge William R. Nevitt, Jr., issued an order granting Webb's petition to confirm the Award. The court stated:

"The Superior Court, indisputably, now has personal jurisdiction over the Keenans. This was not the circumstance found by Judge Domnitz on 8/26/03, when he orally granted the Keenans' motion to vacate -- later signing a 9/2/03 order to that effect [citation]. The Keenans' motion to vacate was explicitly based on their contention that they had not been appropriately served with [Webb's] petition to confirm the arbitration award. [Citation.]

"The other arguments of the Keenans are untimely, not having been made in a motion to vacate or correct the arbitration award (or in a response) within the 100 days provided by . . . section 1288 (and 1288.2). This ruling is consistent with Judge Domnitz's order filed 7/2/02 [citation]."

On December 8, the trial court entered judgment on the order confirming the arbitration award in favor of Webb and against Keenan in the principal amount of \$516,434.66, with interest since the date of the Award (\$219,449.37).

Keenan filed a notice of appeal challenging that judgment in Case No. D047948. In that appeal, Keenan contended that the arbitrator exceeded his jurisdiction and the

Award was void because the arbitration was not conducted by an AAA arbitrator in accordance with AAA rules. (See *Webb & Carey v. Keenan*, *supra*, D047948, at pp. 9-21.) On December 29, 2006, in affirming the judgment or the order confirming the Award, we rejected that contention and the other contentions raised by Keenan on appeal. (*Id.*, *passim*.)

On February 24, 2006, Keenan filed a motion to vacate the trial court's December 8, 2005 judgment against him. Keenan's motion was characterized by him as a motion to vacate judgment "void for lack of personal jurisdiction." The motion asserted the judgment was "wholly void because [it is] based on an underlying invalid arbitration award." In the memorandum of points and authorities in support of his motion, Keenan argued:

"[The judgment] against [Keenan is] wholly void and must now be vacated. The [judgment is] based upon an underlying arbitration award rendered by an arbitrator who lacked personal jurisdiction over [Keenan].

"The arbitrator never acquired personal jurisdiction over [Keenan] because the arbitration was conducted in a manner inconsistent with and contrary to an agreement to arbitrate entered into by [Webb] and [Keenan]. Because of this, the favorable arbitration award procured by [Webb] was given without legal authority and is a nullity. As a result, the [judgment] that flow[s] from the invalid award [is itself] void and must now be vacated."

In so arguing, Keenan essentially made the same contention raised in his appeal in Case No. D047948 that the Award was void because the arbitration was not conducted by an AAA arbitrator in accordance with AAA rules as purportedly required by the parties'

arbitration agreement. Therefore, the entire premise of his motion to vacate the judgment as "void" was that the *Award* was void.

On March 29, 2006, the trial court denied Keenan's motion to vacate the judgment, stating:

"The [judgment] that [Keenan] seek[s] to vacate [was] entered on a confirmed [Award] that was issued and served on August 29, 2001 [sic]. [Citation.] In this motion, [Keenan] contend[s] that the [judgment is] void because the [Award] is 'void.' Notwithstanding [Keenan's] contention to the contrary, the ground alleged for finding the [Award] 'void' is that the arbitrator 'exceeded his powers' (Code Civ. Proc., § 1286.2(a)(4).) [Keenan is] barred from raising this ground for vacation more than 100 days after service of [a] signed copy of the [A]ward. (Code Civ. Proc., §§ 1288, 1288.2.) [Keenan does] not dispute that [he] did not comply with this 100-day time limit. [Keenan's] motion to vacate the [judgment] is denied as time-barred."

Keenan timely filed a notice of appeal of that postjudgment order.

## DISCUSSION

### I

#### *Appealability of Postjudgment Orders Generally*

Section 904.1, subdivision (a) provides in relevant part:

"An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

"(1) From a judgment . . . .

"(2) From an order made after a judgment made appealable by paragraph (1)."

Therefore, an appeal generally may be taken from an order issued after an appealable judgment. (§ 904.1, subd. (a)(2).) However, "not every postjudgment order that follows

a final appealable judgment is appealable. To be appealable, a postjudgment order must satisfy two additional requirements." (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651, fn. omitted.) "The first requirement . . . is that *the issues raised by the appeal from the order must be different from those arising from an appeal from the judgment.* [Citation.]" (*Ibid.*, italics added.) In the context of a postjudgment order denying a motion to vacate, the Supreme Court explained in *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351:

"An order denying a motion to vacate an appealable judgment is generally not appealable if such appeal raises only matters that could be reviewed on appeal from the judgment itself. The reason for this general rule is that to allow the appeal from the order of denial would have the effect of allowing two appeals from the same ruling and might in some cases permit circumvention of the time limitations for appealing from the judgment. [Citations.]" (*Id.* at p. 358, italics added.)

"The second requirement . . . is that 'the order must either affect the judgment or relate to it by enforcing it or staying its execution.' [Citation.]" (*Lakin v. Watkins Associated Industries, supra*, 6 Cal.4th at pp. 681-682.)

" 'As a general rule, [postjudgment] orders *denying* a motion to vacate are *not* appealable, because any assertions of error can be reviewed on appeal from the judgment itself. To hold otherwise would effectively authorize two appeals from the same decision. [Citations.]' [Citation.]" (*Scognamillo v. Herrick* (2003) 106 Cal.App.4th 1139, 1146.) Nevertheless, although a postjudgment order denying a motion to vacate the judgment generally is not appealable because it raises only issues that could have been raised on an appeal from the judgment, there is an implicit exception allowing an

appeal from a postjudgment order that denies a motion to vacate a judgment as void for lack of fundamental jurisdiction. (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2006) ¶ 2:175, p. 2-94 (rev. #1, 2006) ["An appeal may be taken from an order denying a motion to vacate a *void* judgment. Reason: Denial of the motion constitutes an order giving effect to a void judgment and thus is itself void and appealable. [Citations.]"].) *In re Marriage of Brockman* (1987) 194 Cal.App.3d 1035 stated:

"Ordinarily, the denial of a motion to vacate a judgment is not an appealable order. . . . An exception has been recognized, however, where the judgment appealed from is void. There, the denial of a motion to vacate is an order giving effect to a void judgment, and is itself void and appealable. [Citation.]" (*Id.* at pp. 1040-1041, fn. omitted.)

Another court explained this exception:

"If the judgment is void, it is subject to collateral attack by means of a postjudgment motion to vacate or set aside the judgment as void. [Citations.] An order denying such a motion is a special order made after entry of judgment that may be directly attacked on appeal. [Citations.] This appeal is allowed because an order giving effect to a void judgment is also void and appealable. [Citations.] Thus, when an appellant attacks an order on the ground that it gives effect to a judgment that is void for lack of jurisdiction, the order may be appealed even if the underlying judgment was also appealable. [Citation.] This rule constitutes an exception to the ordinary rule precluding an appeal from an order denying a motion to vacate a judgment in order to prevent an appellant from having two opportunities to appeal. [Citation.]" (*Residents for Adequate Water v. Redwood Valley County Water Dist.* (1995) 34 Cal.App.4th 1801, 1805.)

## II

### *Appealability of Postjudgment Order in This Case*

We first address the issue of whether the postjudgment order denying Keenan's motion to vacate is appealable. We requested, and have received and considered, supplemental briefs from the parties on the issue of whether the instant appeal should be dismissed because it raises the same issues raised in Keenan's prior appeal of the trial court's judgment (in Case No. D047948) *and* is not, *in substance*, an appeal from a postjudgment order denying a motion to vacate the judgment as void for lack of fundamental jurisdiction of the *trial court* (in contrast to lack of jurisdiction of the *arbitrator*).<sup>3</sup>

## A

As Keenan notes, a *judgment* is *void* on its face if the *trial court* did not have personal or subject matter jurisdiction and can be directly or collaterally attacked at any time (e.g., by means of a postjudgment motion to vacate the judgment as void). (*Strathvale Holdings v. E.B.H.* (2005) 126 Cal.App.4th 1241, 1249.) The Supreme Court explained the meaning of "jurisdiction" in the context of a "void" judgment in *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653:

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<sup>3</sup> We also requested supplemental briefs on the issue of whether, if the appeal is not dismissed, the doctrines of res judicata and/or issue preclusion apply to bar the issues raised by Keenan in this appeal based on our judgment in *Webb & Carey v. Keenan*, *supra*, D047948, which (after denial of review by the California Supreme Court on March 21, 2007) is now final.

"The term 'jurisdiction,' 'used continuously in a variety of situations, has so many different meanings that no single statement can be entirely satisfactory as a definition.' (*Abelleira v. District Court of Appeal* (1947) 17 Cal.2d 280, 287 [109 P.2d 942] (*Abelleira*).) Essentially, jurisdictional errors are of two types. '*Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.*' (*Id.* at p. 288.) *When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and 'thus vulnerable to direct or collateral attack at any time.'* [Citation.]

"However, 'in its ordinary usage the phrase "lack of jurisdiction" is not limited to these fundamental situations.' (*Abelleira, supra*, 17 Cal.2d at p. 288.) It may also 'be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no "jurisdiction" (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.' (*Ibid.*) '[W]hen a statute authorizes [a] prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction.'" (*Id.* at p. 290.) *When a court has fundamental jurisdiction, but acts in excess of its jurisdiction, its act or judgment is merely voidable.* [Citations.] That is, its act or judgment is valid until it is set aside, and a party may be precluded from setting it aside by 'principles of estoppel, disfavor of collateral attack or res judicata.' [Citation.] Errors which are merely in excess of jurisdiction should be challenged directly, for example by motion to vacate the judgment, or on appeal, and are generally not subject to collateral attack once the judgment is final unless 'unusual circumstances were present which prevented an earlier and more appropriate attack.' (*Pacific Mut. Life Ins. Co. v. McConnell* (1955) 44 Cal.2d 715, 727 [285 P.2d 636]; *id.* at p. 725 [general rule is that a 'final judgment or order is res judicata' and not subject to collateral attack 'even though contrary to statute where the court has jurisdiction in the fundamental sense, i.e., of the subject matter and the parties']; [citation].)" (*Id.* at pp. 660-661, italics added.)

"The principle of 'subject matter jurisdiction' relates to the inherent authority of the court involved to deal with the case or matter before it. [Citation.]" (*Conservatorship of O'Connor* (1996) 48 Cal.App.4th 1076, 1087.) When a trial court has personal and

subject matter jurisdiction, or "fundamental" jurisdiction, the court "has power to hear and determine the cause" and, within that fundamental jurisdiction, "may rule erroneously on matters of pleading, evidence or other procedure; may determine the issues of substantive law incorrectly; and may give judgment for a party not entitled thereto, or may grant relief not warranted by the pleadings, evidence or the law. Any or all of these *errors* of procedure or substantive law . . . are *errors within jurisdiction*, and not grounds for *collateral attack* on the judgment [as void] . . . ." (2 Witkin, Cal. Procedure (4th ed. 1996) Jurisdiction, § 278, p. 843.) Therefore, "[a]ction 'in excess of jurisdiction' by a court that has jurisdiction in the 'fundamental sense' (i.e., jurisdiction over the subject matter and the parties) is not void, *but only voidable*. [Citations.]"<sup>4</sup> (*Conservatorship of O'Connor*, 48 Cal.App.4th at p. 1088.)

## B

As noted above, Keenan's postjudgment motion was designated by him as a motion to vacate judgment "void for lack of personal jurisdiction." The motion asserted the judgment was "wholly void because [it is] based on an underlying invalid arbitration award." In so arguing, Keenan essentially made the same contention raised in his appeal in Case No. D047948, as discussed above, that the Award was void because the arbitration was not conducted by an AAA arbitrator in accordance with AAA rules as

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<sup>4</sup> To the extent Keenan cites *Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, at page 1239, or other cases or authorities, to support a contrary assertion that acts "in excess of" a trial court's jurisdiction are void, rather than merely voidable, those cases and authorities have been in effect disapproved by *People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th at pages 660 to 661.

purportedly required by the parties' arbitration agreement. Therefore, the entire premise of his motion to vacate the judgment as void was that the *Award* was void.

Keenan did *not* assert, either in his postjudgment motion or in this appeal, that the *trial court* did not have fundamental jurisdiction over Webb's petition to confirm the Award. Because he does not dispute that he was properly served with Webb's second petition to confirm the Award (in Case No. GIC 817390), we conclude the trial court had personal jurisdiction over him in that matter.<sup>5</sup> Furthermore, he does not dispute that the trial court had subject matter jurisdiction to hear a petition to confirm an arbitration award. (See §§ 1285 et seq. [regarding trial court's power to consider petitions to confirm arbitration awards and enter judgments confirming those awards].)<sup>6</sup> (Cf. *Law Offices of Ian Herzog v. Law Offices of Joseph M. Fredrics* (1998) 61 Cal.App.4th 672, 680 ["Under section 1281.2, the [trial] court had subject matter jurisdiction to determine

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<sup>5</sup> The record shows Keenan filed a memorandum of points and authorities in opposition to Webb's petition and was vigorously represented by counsel throughout the proceedings on that petition.

<sup>6</sup> Section 1285 provides: "Any party to an arbitration in which an award has been made may petition the court to confirm . . . the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award." Section 1285.2 provides: "A response to a petition under this chapter may request the court to dismiss the petition or to confirm, correct or vacate the award." Section 1286 provides: "If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made . . . unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding." Section 1286.2, subdivision (a) provides that a trial court may vacate an arbitration award if it finds: "(4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted. . . ." Section 1287.4 provides: "If an award is confirmed, judgment shall be entered in conformity therewith. . . ."

whether the parties could be ordered to contractual arbitration. [Citations.] If the court decided this question incorrectly, its error was committed in the exercise of its jurisdiction. [Citation.]").) Accordingly, Keenan does not, in substance, dispute that the *trial court* had subject matter jurisdiction to consider and decide Webb's petition to confirm the Award.

Although Keenan apparently argues the trial court did not have fundamental jurisdiction because the *arbitrator* did not have jurisdiction over him or the parties' dispute, a showing that the *arbitrator* did not have personal or subject matter "jurisdiction" over a dispute is insufficient to show the *trial court* did not have personal and subject matter, or fundamental, jurisdiction over a petition to confirm the arbitrator's award. At most, that argument might show the trial court erred in law or fact, or both, and thereby may have acted *in excess of* its jurisdiction. However, acts by a trial court in excess of its jurisdiction are *not void*, but merely voidable, if the court has fundamental jurisdiction.

Accordingly, the *substance* of Keenan's motion to vacate the judgment was that the trial court, at most, acted in excess of its jurisdiction or otherwise erred in the proceeding to confirm the Award. His motion did *not*, in substance, assert the trial court did not have fundamental jurisdiction over the parties or the proceeding. Therefore, despite Keenan's use of the label of, or characterization of his postjudgment motion as, a motion to vacate judgment as "void" for lack of jurisdiction, it was *not, in effect*, a motion to vacate a judgment as void for lack of fundamental jurisdiction of the trial court. To conclude otherwise would be to elevate form over substance. (*Forman v. Knapp Press*

(1985) 173 Cal.App.3d 200, 202-203 [dismissing appeal from a mislabeled motion to vacate a summary judgment]; *City & County of S. F. v. Muller* (1960) 177 Cal.App.2d 600, 603 ["The nature of a motion is determined by the nature of the relief sought, not by the label attached to it. The law is not a mere game of words."]; *Fountain Valley Chateau Blanc Homeowner's Assn. v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 753 ["There is precedent for looking to the substance of a . . . motion rather than just its title."]; *Jean v. Collins Construction Co.* (1963) 215 Cal.App.2d 410, 414 [same]; cf. *Rubin v. Green* (1993) 4 Cal.4th 1187, 1203 [refusing to accept plaintiff's "conveniently different label for pleading what is in substance an identical grievance arising from identical conduct . . . ."]; *Standard Brands of California v. Bryce* (1934) 1 Cal.2d 718, 721 ["The subject matter of an action and the issues involved are determinable from the facts pleaded, rather than from the title or prayer for relief. [Citation.]"]; *Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 283 [plaintiff may not "plead around" an "absolute bar to relief" by simply "recasting the cause of action"]; *Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908 ["It has long been established that in ruling on a demurrer, the trial court is obligated to look past the form of a pleading to its substance. Erroneous or confusing labels attached by the inept pleader are to be ignored if the complaint pleads facts which would entitle the plaintiff to relief. [Citation.] 'It is not what a paper is named, but what it is that fixes its character.' [Citation.]"]; *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 339 [same].)

Because Keenan's postjudgment motion was *not, in effect or substance*, a motion to vacate a judgment *as void* for lack of fundamental jurisdiction, the instant appeal of the

trial court's postjudgment order denying that motion is not, in effect, an appeal of an order denying a motion to vacate a judgment as void for lack of fundamental jurisdiction. Therefore, absent Keenan's raising of issues different from those raised (or that could have been raised) in his appeal of the judgment in Case No. D047948, that postjudgment order is *not* appealable according to the case law discussed in part I, *ante*. (*Lakin v. Watkins Associated Industries*, *supra*, 6 Cal.4th at p. 651; *Rooney v. Vermont Investment Corp.*, *supra*, 10 Cal.3d at p. 358; *Scognamillo v. Herrick*, *supra*, 106 Cal.App.4th at p. 1146; *In re Marriage of Brockman*, *supra*, 194 Cal.App.3d at pp. 1040-1041; *Residents for Adequate Water v. Redwood Valley County Water Dist.*, *supra*, 34 Cal.App.4th at p.1805.) In this appeal, Keenan raises the same issues raised in his prior appeal of the judgment in Case No. D047948, i.e., that the *Award* was void because the arbitration was not conducted by an AAA arbitrator in accordance with AAA rules, as purportedly required by the parties' arbitration agreement. Because Keenan's instant appeal raises the same issues as those in his prior appeal of the trial court's judgment in Case No. D047948 *and* is not, *in substance*, an appeal from a postjudgment order denying a motion to vacate the judgment as void for lack of fundamental jurisdiction of the *trial court* (in contrast to lack of jurisdiction of the *arbitrator*), the instant appeal of the trial court's postjudgment order is not appealable and must be dismissed.<sup>7</sup>

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<sup>7</sup> Even were the instant appeal not dismissed, we nevertheless would conclude the doctrines of res judicata and issue preclusion bar the issues raised in this appeal based on our opinion in *Webb & Carey v. Keenan*, *supra*, D047948, which became final on March 21, 2007 when the California Supreme Court denied review in Case No. S150124. (See, e.g., *Pacific Mut. Life Ins. Co. v. McConnell* (1955) 44 Cal.2d 715, 725 [final

## DISPOSITION

The appeal is dismissed.

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McDONALD, Acting P. J.

WE CONCUR:

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McINTYRE, J.

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O'ROURKE, J.

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judgment of court having fundamental jurisdiction has res judicata effect]; *Sabek, Inc. v. Engelhard Corp.* (1998) 65 Cal.App.4th 992, 997 ["Issue preclusion is one component of the doctrine of res judicata;" res judicata has " 'the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party . . . and of promoting judicial economy by preventing needless litigation.' [Citation.]"].)